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Situation of human rights in Haiti

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report, accompanied by recommendations, on the situation of human rights in Haiti, prepared by Adama Dieng, independent expert, in accordance with Economic and Social Council decision 1999/248 dated 27 July 1999.

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I. Introduction

1. In presenting his report to the General Assembly at its fifty-third session (A/53/355, annex), the independent expert emphasized the threats to the stability of the country resulting from the prolonged absence of a Prime Minister and a government. He also stressed that the greatest challenge faced by Haiti is to build a State ruled by law through the establishment of a modern, effective, independent, democratic and equitable judicial system that is available to all. Other major concerns were the question of the withdrawal of the United Nations Civilian Police Mission in Haiti (MIPONUH), the activities of the National Police, combating impunity, and the situation with regard to women's rights and the rights of the child. Three months later, there was an outbreak of violence in Port-au-Prince. In view of that situation, on 29 January 1999 the independent expert appealed to the Haitian political actors and civil society to resolve the crisis.

2. He likewise deplored the institutional void created by President René Préval's "declaration" that the mandate of Parliament had expired. The climate of insecurity was also emphasized by Haitian non-governmental organizations (NGOs), opposition leaders and various United Nations agencies. In view of the seriousness of the situation, which was aggravated by the murder of Senator Jean-Yvon Toussaint, the independent expert decided to visit Haiti from 11 to 20 March 1999. During his visit, he had meetings with the President, Prime Minister Jacques-Édouard Alexis, the President of the Senate, the Special Representative of the Secretary-General for Haiti and the head of MIPONUH, the Minister of Justice, the judicial and police authorities, the leaders of political parties, the International Civilian Mission in Haiti (MICIVIH), human rights NGOs, women's organizations and donors. He likewise visited the National Penitentiary in Port-au-Prince and a number of police stations.

3. With regard to collective freedoms, the independent expert was pleased to note that there is no interference with freedom of the press, freedom of assembly, freedom to demonstrate, the right to strike, freedom of association and so on. He forcefully condemned the attack on President Préval's sister and special assistant, Marie-Claude Calvin Préval, which took place two days after the President's "declaration" that the mandate of the forty-sixth legislature had expired. Madame Calvin Préval was seriously wounded in the attack and her driver was killed. The independent expert was nevertheless glad that, on the whole, the situation was handled with great sang-froid, but called upon all concerned to strive to create conditions conducive to the emergence of a social compact.

4. The independent expert welcomes the efforts to end the crisis made by the countries known as the Friends of Haiti, the United Nations and the Organization of American States. He encourages them to continue their policy of cooperating with Haiti. He hopes that all Haitian political actors are aware of the threats to human rights implicit in any new crisis that might arise in Haiti. He appeals to their sense of responsibility and recommends that the political dialogue initiated with a view to ensuring the efficient operation of institutions, and thus guaranteeing the existence of a State ruled by law, will be continued and strengthened.

5. This report summarizes the findings of the independent expert's mission and the information he has received regularly from MICIVIH, the Haitian Government and certain NGOs. He takes this opportunity to thank all concerned for their valuable cooperation, without which he would have been unable to fulfil his mandate.

II. Combating impunity

6. By chance, the independent expert appeared before the Commission on Human Rights at its fifty-fifth session on the anniversary of the Raboteau massacre, which occurred on 22 April 1994. The commemoration by the Haitian people of the fifth anniversary of this tragedy provided an occasion for both the Government and the NGO community to renew their appeal for the return without delay of all the documents seized from the headquarters of the Haitian Armed Forces and of the Front pour l'avancement et le progrès Haitien (FRAPH), which are still being held by the American authorities. The independent expert has on many occasions emphasized the need for a final settlement of this case.

7. It will be recalled that these documents were seized by United States troops soon after their arrival in Port-au-Prince as part of the Multinational Force. The documents were transferred to the United States without the Haitian Government's knowledge or consent. Today, there is unanimous agreement that these documents, which include audio and video cassettes of torture sessions, together with photographs, will be a valuable source of information for the prosecution of those responsible for serious crimes committed during the *coup d'état* regime.

8. The argument put forward by the United States Government to justify its failure to return the documents, based on respect for the Privacy Act, 5U.S.C.552a, does not withstand analysis. The same is true of the argument based

on the Defense Intelligence Agency (DIA) Manual, section 58-13, concerning documents classified as United States military material. A widespread campaign for the return of the documents has been launched by Haitian organizations and has received substantial support in over 20 countries, especially European countries. In the United States, a letter from Human Rights Watch published in *The New York Times* described the documents as providing "some of the best evidence about the junta" and attributed Washington's refusal to give the documents back to the determination "to avoid revelations on its intelligence links to the junta".

9. Similarly, Amnesty International USA addressed a letter to Madeleine Albright supporting the position of the independent expert and calling for the return of the documents. The same position was taken by the Permanent Representative of Haiti to the United Nations at the fifty-fifth session of the Commission on Human Rights; he criticized the lack of any reference to the question in the resolution adopted by the Commission. Furthermore, the new Minister of Justice, Camille Leblanc, attaches priority to the question of the documents. He has linked the failure to return the documents to the absence of justice for the victims of the *coup d'état* and has drawn attention to the contradiction between the appeals of the United States concerning the trials of those accused of committing crimes against humanity in the former Yugoslavia and the lack of cooperation with regard to similar proceedings in Haiti. He implied that the United States might be concerned because the documents contain information regarding the possible implication of its citizens in human rights violations.

10. On 22 April 1999, MICIVIH issued a press release linking the question of the documents to the problem of impunity in Haiti. In the same month, the winner of the Nobel Peace Prize, Adolfo Pérez Esquivel of Argentina, visited Haiti and reiterated his firm support for the campaign for the return of the documents. One case which may be singled out is that of a former sergeant in the Haitian Army, Fritznel Jean-Baptiste, who was tried and sentenced for torture, kidnapping and attempted murder during the *coup d'état*. He allegedly stated that production of the documents could have proved his innocence. However, the jury did not believe him and he is currently serving a five-year prison term.

11. Despite many appeals from the independent expert and repeated requests from the Haitian authorities, supported by MICIVIH, members of the United States Congress, three Nobel Peace Prize winners, dozens of NGOs and thousands of people throughout the world, the Haitian people are still waiting for these documents, which form an essential part of their history. The independent expert recommends to the General Assembly that the United States should be invited to return the documents, intact and without delay. It may be noted that Haiti has already signed the Rome Statute of the International Criminal Court and that President Préval has stated he intends to ratify this important treaty.

III. The judicial system

12. Haiti is being affected more seriously than ever by the weakness of its judicial system. The process of reforming that system is progressing at a slow pace, meaning that it will be some time before the Haitian people get the judicial system they want. Regrettably, despite the efforts made at the penitentiary infrastructure level, detention conditions have improved very little, owing to a dysfunction of the criminal justice system. During his stay in Haiti, the independent expert observed multiple human rights violations throughout the judicial system, which is supposed to be the principal guarantor of such rights.

13. One need only cite the cases of illegal detention for debt or sorcery, failure to respect judicial procedures resulting from ignorance or corruption, failure to respect writs of habeas corpus issued by judges, especially in Port-au-Prince, and cases of arbitrary arrest and denial of justice. It is not surprising that out of a prison population of 1,568 in the National Penitentiary in Port-au-Prince as of 18 March 1999, only 210 (13 per cent) had been tried; the other 87 per cent, that is, 1,358 people, were being held in pre-trial detention. Most cases are affected by serious judicial irregularities.

14. According to statistics compiled by MICIVIH, in December 1998, 3,740 people were detained in Haitian prisons, of whom only 19 per cent had been tried. The independent expert was particularly shocked by the case of 11 adolescents who had been held in pre-trial detention since 1996. They were accused of having killed a foreigner, although there was no *corpus delicti*. In March 1997, an order was issued dismissing the criminal proceedings against them, but the Government commissioner opposed their release. In August 1998, an appeal court confirmed that they should be released, but the clerk of the court refused to draft the order unless the accused agreed to pay the costs. In November 1998, MICIVIH was informed that they would not be freed unless a rehabilitation centre could be found for them. They were finally released on 18 December 1998. This denial of justice is just as shocking as the case of a person detained in Anse-à-Veau since 1997, who was held in prison for 525 days before being heard by a judge and was then released for lack of evidence.

15. On 22 July 1999 the Deputy Executive Director of MICIVIH discussed with the Minister of Justice the case of 22 people who were detained in Port-au-Prince despite the fact that an order had been issued for their release. Nine of them had been held in pre-trial detention for over 1,000 days. The question of the preparations for the Raboteau massacre trial, including the contribution of additional international consultants by MICIVIH, was likewise discussed at this meeting.

16. On 27 July 1999, following the meeting between MICIVIH and the Minister of Justice, a discussion was held with all the judicial authorities taking part in the Raboteau massacre trial. The discussion focused essentially on the question of the criminal responsibility of those who were involved in the massacre without having participated directly in the executions.

17. Although the situation with regard to collective freedoms is satisfactory, potential threats to individual freedoms are a cause of concern. There are an increasing number of cases involving arbitrary and/or illegal detention, and many decisions calling for the release of detainees issued by the senior judge of the Port-au-Prince civil court are not implemented by the government commissioner (Government Procurator) for that jurisdiction. Writs of habeas corpus are therefore rendered meaningless. This situation is unsatisfactory and the Haitian authorities and the international community, especially the United Nations and MICIVIH, should make every effort to improve it.

18. It is nevertheless reassuring to note that certain judges are trying to speed up procedures in some towns, even if that does not increase the percentage of people brought to trial. It should also be pointed out that of 100 minors held in detention, only 10 have been tried. These problems, which are linked to the inefficient functioning of the criminal justice system, are compounded by the lack of human resources, the dilapidated state of the courts, and the lack of means of communication, electricity, vehicles and office supplies, and in some cases of codes of judicial procedure.

19. All parties, whether the President of the Republic, the Prime Minister, the Minister of Justice, the leaders of political parties, or the human rights NGOs, acknowledge that the weakness of the judicial system is one of the main concerns currently facing Haitian society. This situation further exacerbates the prevailing sense of impunity in the country. As the Prime Minister pointed out during his meeting with the independent expert, the problem of justice is bound up not only with corruption but also with the lack of appropriate training, the deficiencies of law schools in the provinces and the shortage of teachers.

20. In that connection, the independent expert encouraged the Prime Minister, with the assistance of the international community, to carry on with a project for the establishment of law schools in the North, South and Artibonite Departments which would also train teachers of administration and technology with a view to preparing the human resources essential for regional development.

21. The new Minister of Justice has resolutely begun improving the administration of justice while, at the same time, pointing out that real judicial reform cannot be instituted until legislative elections have been held. That view, which is shared by the independent expert, did not prevent the Minister from taking measures, albeit modest ones, which bear witness to his determination. For example, in accordance with the time-frame of the Ministry's plan of action, 11 vacant posts in the judiciary have been filled. Three government commissioners, eight registrars and two ushers have also been appointed.

22. Work has begun on organizing a mobile justice system whereby justice can be brought closer to those amenable to the jurisdiction of the courts. To that end, a government commissioner has been designated to travel to the island of Gônave in order to be more accessible and to expedite certain cases within his competence. That initiative is to be extended to other jurisdictions.

23. In earlier reports, the independent expert drew attention to the very low level of remuneration of judges and judicial offices. He therefore welcomes the new salary policy which has been studied and established by the Ministry in order to enhance the status of the judicial function. It is to be hoped that the 200 to 300 per cent increase in salaries will attract competent people to serve in the judicial sector.

24. The independent expert also commended the work done by a commission of inquiry established by the Minister the report of which served as a basis for the dismissal of members of the judiciary involved in acts of corruption and fraud within the judicial system.

25. In the context of preparations for the Raboteau massacre trial, the Minister of Justice arranged for a reenactment in early June of the events at Gonaïves, the scene of the massacre. For security reasons, the accused did not take part and their place was taken by policemen, but judicial sources have affirmed that the video recordings made during the reenactment would be shown to the accused and that their comments would also be recorded.

26. The independent expert also wishes to emphasize that the price to be paid for peace, democracy and development includes the construction of an independent judicial system

accessible to all. In that connection, he regrets the slow pace of the judicial reform process.

IV. The question of violence

27. The climate of insecurity that has prevailed for some time in Haiti is a matter of concern that has been emphasized both by NGOs and by the leaders of the opposition and the various United Nations agencies. In March 1999, the independent expert lamented the renewed upsurge of violence in Port-au-Prince and roundly condemned the assassination of Senator Jean-Yvon Toussaint. Some weeks earlier, the sister of President Préval had been seriously injured in an attack, and her driver killed. Another assassination was that of Father Jean, a priest well-known for his commitment to human rights. The independent expert therefore requested the Haitian authorities to spare no effort to have the perpetrators of those crimes swiftly arrested, prosecuted and tried in accordance with the relevant human rights standards.

28. Pierre Espérance, Director of the National Bureau of the Coalition nationale pour les droits des Haitiens (National Coalition for the Rights of Haitians) and a prominent defender of human rights, escaped death in an armed attack. He was shot in the shoulder and the knee. The independent expert visited him in the hospital and held discussions with his colleagues, who were still in a state of shock. The Minister of Justice informed the independent expert that an inquiry had been opened. Serge Alcindor, a lawyer at the Haitian bar, was likewise a victim of a serious attack at his home in which he was shot six times, four times in the head and twice in the stomach. Fortunately, no vital organ was affected, and the bullets had no traumatic after-effects. Mr. Alcindor is at present abroad. During his stay in Haiti, the independent expert had discussions with him in which he said that his life was being threatened. Speaking from abroad, he confirmed to the independent expert that politics had nothing to do with the plot which had almost cost him his life and that the authorities of the Republic were in no way responsible.

29. Far from decreasing, violence seems to have taken on a more worrying dimension. Last April, the acting spokesman for the Haitian National Police announced that, between 1 and 8 April, the National Police had recorded 20 assassinations and 12 cases of murder and attempted murder. During the same period, the Judicial Police recorded 86 acts of aggression, as compared with 34 in the previous week. The police also seized nine firearms. The spokesman also stated that 242 people had been questioned, 127 of them in the West Department where 55 per cent of the offences were committed.

30. One serious incident involving the assassination of a policeman on 9 April at Martissant (a suburb south of Port-au-Prince) deserves to be mentioned. It is alleged that some policemen who were members of the Compagnie d'Intervention Rapide et de Maintien d'Ordre (Rapid Intervention and Law Enforcement Unit) shot four young people who were at the scene of the crime in cold blood by way of reprisal. Although the spokesman for the Haitian National Police denied that the police were in any way responsible for the death of the four young people, the independent expert welcomed the announcement that an inquiry was to be opened to establish the truth.

31. On 28 May 1999, demonstrations were organized in Port-au-Prince by the Chamber of Commerce and Industry to protest against insecurity, political violence and anarchy. Other demonstrators, supporters of former President Aristide, were involved in violent clashes with the demonstrators. Immediately after the demonstrations ended, the Police carried out an operation in the Carrefour Feuilles district of the capital during which 11 people were killed. Several policemen were arrested after those incidents. The Police subsequently stated that the 11 victims belonged to armed gangs and had been killed in exchanges of fire with police. According to MICIVIH, however, 10 out of the 11 had gunshot wounds to the head and the eleventh a gunshot wound to the heart. A police commissioner involved in the killing who had fled to the Dominican Republic was arrested on 3 June and handed over to the Haitian authorities on 5 June 1999. He was relieved of his police responsibilities and detained at the National Penitentiary. Two other policemen were put in solitary confinement, thus bringing the number of policemen arrested to five. All of them have denied any personal participation in the killing.

32. One fundamental question that arises is whether this wave of assassinations, murders and attacks, which are also directed against prominent public figures in Haiti, is part of a pattern of general lawlessness or whether the crimes are politically motivated. The inquiries being conducted must be totally independent, impartial and thorough in order finally to shed light on the situation. It should also be noted that drug trafficking is on the increase in spite of the efforts made by Haitian National Police to combat narcotic drugs. The support of the international community is necessary in order to prevent a risk of destabilization caused by drug traffickers.

V. The Haitian National Police

33. The independent expert wishes to commend the efforts of the Director-General of the Haitian National Police which have, in the main, resulted in satisfactory police conduct with respect to human rights. The statistics compiled by MICIVIH nevertheless indicate a disturbing increase in allegations of police brutality and other forms of ill treatment during arrest or interrogation, which increased from 284 in 1997 to 423 in 1998. However, inquiries have been opened in most cases of alleged abuse, particularly the most serious ones. It should also be noted that penalties, which may include dismissal, are imposed by the police authorities. Between January and December 1998, the Director-General of the Haitian National Police dismissed 220 policemen, 35 of whom were involved in human rights violations.

34. For his part, the Inspector-General of the Haitian National Police criticized failures by senior police officers to penalize abuses or breaches of discipline committed by their subordinates. He therefore made proposals for the establishment of a more publicly accessible complaints system. Except in Port-au-Prince, victims are still in most cases reluctant to report police officers for fear of reprisals.

35. At the end of 1998, four policemen were in detention for human rights violations, three of them for torture and the fourth for a summary execution.

36. On 21 July 1999, MICIVIH issued a press release expressing its concern at allegations of police involvement in the activities of armed groups that were said to be responsible for at least 16 cases of murder and the disappearance of suspected gang members in May and June 1999 in the districts of Projet Drouillard and Bois Neuf and in Cité Soleil.

37. Unfortunately, the judicial system is so lax that many police officers escape justice by bribing the judges. In the medium term, this situation is likely to undermine the morale of those policemen who respect the rules in carrying out their task.

38. The independent expert strongly urges the continuation of the programme of the Haitian organization Fonds des droits humains entitled "*Police communautaire*" (community policing) which addresses relations between the police and the public. During his meeting with Mr. Dessables, President of Fonds des droits humains, the independent expert was greatly encouraged to note that the Director-General of the Police had expressed his support for the programme. It must be pointed out that the concept of "community policing" does not denote a police force separate from the Haitian National Police but implies irreproachable professional conduct by police officers, or by the police as an institution, with respect to the community or individual members of the public.

39. According to Mr. Dessables, community policing must be seen as a dynamic and participatory process designed to bring about a steady improvement in relations between the police and the population they serve, on the one hand, and between the population and the police, on the other. The police and the population must not feel that they belong to different camps, and still less that they are in a state of mutual hostility. In other words, action is needed to ensure that mistrust is replaced by confidence and that cooperation takes the place of hostility. In his first report, the independent expert stressed the importance of the role of the police in the community. He is convinced that the programme deserves the support of all those who are committed to harmonious relations between the Haitian population and the police, based on mutual respect and non-violence, in order to ensure security and peace for all.

VI. The post-MIPONUH era

40. The climate of insecurity, the corruption in both the judiciary and the police, the poor functioning of justice and the inadequate resources at the disposal of the Haitian National Police are all elements which must be taken into account in considering the question of the future of the United Nations Civilian Police Mission in Haiti (MIPONUH). It would appear that the Security Council has no intention of renewing the mandate of MIPONUH, which has at its disposal a contingent of 140 international armed police officers deployed throughout Haiti's nine provinces. There is no doubt that the presence of these officers has a genuine impact on the human rights situation. Apart from visiting detention centres, they also help to enhance the professionalism of the new Haitian National Police and to reassure the population.

41. While it is true that most political actors, whether in power or in opposition, do not believe that Haiti should enter the twenty-first century with a foreign armed presence, they nevertheless recognize the very reassuring role played by MIPONUH and the danger that would ensue on its final departure. For his part, the independent expert fears that the withdrawal of MIPONUH might create a vacuum that could be exploited by anti-democratic forces and other former military personnel. This fear would be dispelled if the mechanism for coordinating international assistance to the Haitian National Police could cope with the enormous

security problems looming on the horizon with the general elections scheduled to take place on 19 December 1999 (the first round) and 19 January 2000 (the second round).

42. While recognizing the genuine progress made in enhancing the professionalism of the Haitian National Police, which is under the authority of a Director-General who commands admiration, it should be noted that the National Police would never have been able to accomplish its mission without the constant support of MIPONUH. Certainly, it should not be forgotten that the Haitian National Police is still new and has only a limited number of about 6,000 men at its disposal. In psychological terms, the mere presence of MIPONUH has thus far helped to give the population a feeling of security and to provide a stabilizing factor.

43. During his stay in Haiti, the independent expert assessed the eminent role played by the United Nations Development Programme (UNDP) through its police project, which is run by a man possessing many excellent qualities and a keen political awareness. The efficiency of that project, however, should be judged by the yardstick of the presence of MIPONUH. With the eventual final departure of MIPONUH, there would be a number of problems to overcome, including the establishment of a communications system, the analysis and use of information gathered on the ground, and rapid transport logistic.

44. At the time of writing this report, the independent expert had not yet seen the report on MIPONUH which the Secretary-General was to submit to the Security Council in August 1999. That being so, and without prejudging the progress made in establishing a lasting support programme for the Haitian National Police, he wishes to emphasize once again the security aspect of the post-MIPONUH era.

45. The independent expert welcomes the fact that representatives of the diplomatic corps and other members of the international community in Haiti, including the Director of MICIVIH, have taken the initiative of meeting to discuss proposals concerning the establishment of an Economic and Social Council mission that would be active in the field of institution-building after the departure of MIPONUH and MICIVIH and the possibility of providing the Provisional Electoral Council with technical and financial assistance in connection with the forthcoming election.

VII. Technical cooperation programme

46. The independent expert wishes to mention the question of the technical cooperation agreement signed between the Haitian Government and the Office of the United Nations High Commissioner for Human Rights. The first phase of that agreement was implemented in 1995-1996. The second phase, which should have ended in June 1998, was not completed due to a unilateral decision taken by the Office of the High Commissioner in March 1998 to assign the project to MICIVIH. Neither the independent expert, nor the Haitian Minister of Justice, had been consulted beforehand. In the context of a withdrawal of MICIVIH, it seems essential to give some thought to the question of ensuring that the Office of the High Commissioner has a visible presence.

47. That presence is particularly desirable given the human rights situation in Haiti and the inadequacy of the human resources in the various ministerial departments. Support would be greatly appreciated in connection with the drafting of reports to be submitted to the bodies established pursuant to international human rights instruments and with the revision of the Code of Penal Procedure and the Penal Code.

48. The independent expert was consulted by the Coordinator of the Latin American and Caribbean Team of the Activities and Programmes Branch of the Office of the High Commissioner for Human Rights concerning methods of relaunching the technical cooperation programme. The independent expert was also consulted by the Deputy Executive Director of MICIVIH concerning the three activities planned in the context of the implementation of phase 2 of the technical cooperation agreement.

49. These were the organization of a human rights seminar for local NGOs and a seminar for civil servants and the provision of assistance to the Haitian Government in connection with the revision of the Penal Code. It should be noted that, for reasons relating in particular to the political situation, MICIVIH changed a number of the objectives set forth in the cooperation agreement, the reasons for which were provided by the Deputy Executive Director.

50. Initially, the technical assistance provided by the Office of the High Commissioner was to focus on a training programme for elected politicians and their representatives

with a view to enhancing their human rights skills. The current political context, however, is unfavourable, particularly since those elected will in all likelihood be disinclined to take part in such a seminar until the elections have been held and parliamentary commissions established. MICIVIH therefore suggested the alternative objective of organizing a training session for civil servants from the various ministries and Haitian political entities (the Ministries of Justice, the Interior, Women's Affairs and Foreign Affairs, the General Secretariat of the Senate and the Chamber of Deputies and the Office for the Protection of Citizens).

51. Members of the Preparatory Commission for the Reform of Law and Justice (CPRDJ), as well as judges and government procurators, will be invited to take part in this training, which is designed to enhance the skills of ministerial personnel and judicial officers, particularly with regard to human rights protection policies and techniques for preparing and submitting reports in the context of international human rights treaties.

52. Concerning the second component of cooperation, involving the revision of the Penal Code and the Code of Criminal Investigation, recommendations have been made to update both Codes in the light of the work of CPRDJ, which believed that revision of the Code of Criminal Investigation should take priority, followed by amendment of the Penal Code. MICIVIH consequently proposed that an international consultant should be recruited to assist CPRDJ in elaborating a draft for the Code of Penal Procedure.

53. With regard to the third component, the only amendment relates to the number of participants, which was reduced to 40, with the option of "training of instructors" rather than direct training for members of NGOs. This training is due to take place from 8 to 13 November 1999 and is intended to strengthen the institutional capacities of civil society as regards human rights protection in a democratic society. The independent expert is closely associated with the implementation of this component, particularly since he shares the MICIVIH approach of according absolute priority to strengthening the network of local NGOs engaged in protecting human rights, a priority which is all the more justified because, to the great regret of the independent expert, the mandate of MICIVIH could not be renewed.

54. On 28 May 1999, it was reported that MICIVIH would be losing its Organization of American States (OAS) component and that several regional offices would therefore have to be closed from 1 July 1999 owing to the financial constraints of OAS. OAS, together with United States and international NGOs, tried unsuccessfully to persuade the International Relations Committees of Congress, where there is a Republican majority, to release funds destined for MICIVIH. The Republicans Jesse Helms and Benjamin Gilman had previously declared that the funds should be allotted to Haitian human rights organizations instead.

55. On 16 June, MICIVIH issued a press release announcing the imminent closure of five of its nine regional offices, in Port-de-Paix, Fort Liberté, Hinche, Jacmel and Jérémie, as a consequence of the financial situation created by the departure of the OAS component. On 30 June 1999, all the OAS members of MICIVIH, apart from one, left the Mission following the withdrawal of that component.

56. The independent expert welcomed the decision of the Economic and Social Council, contained in its resolution 1998/4 of 7 May 1999, to create an Ad Hoc Advisory Group on Haiti that would submit recommendations to the Council on how to ensure that international community assistance to the efforts to support the Government of Haiti in achieving sustainable development is adequate, coherent, well coordinated and effective.

57. A delegation from the Ad Hoc Advisory Group visited Haiti from 27 to 30 June 1999. In their report (E/1999/103), issued in July 1999, the members of the Group recommended that the Council should invite the General Assembly to renew the mandate of MICIVIH, taking into account the need to review the mandate to reflect the challenges of the next two years.

58. On 27 July 1999, the Council adopted resolution 1999/11 on the long-term programme of support for Haiti, in which it recommended to the General Assembly to consider renewing the mandate of the Mission. However, following the proposal made by the Ad Hoc Advisory Group in that connection, the resolution recommended to the General Assembly to review all aspects of the mandate and MICIVIH operations in the light of the situation in Haiti.

VIII. Women's rights

59. The outstanding work done by women's organizations deserves commendation. In 1998, the independent expert referred to the session of the International Tribunal for the Elimination of Violence against Haitian Women, held in Port-au-Prince from 25 to 27 November 1997. This activity is beginning to bear fruit, as more and more victims of domestic violence are breaking their silence. Each month, for example, the Kay Famm organization sees an average of

20 women who come to it with complaints of ill-treatment and abuse.

60. The organization Solidarité ak Femmes d'Haiti reports that it has no further need to seek out testimony, as it is now approached by the victims themselves, who come to talk about the rapes to which they have been subjected. It is also reassuring to note that NGOs other than women's groups are beginning to take action to combat violence against women, as in the case of Justice et Paix des Gonaïves. Even more remarkable is the fact that, having been made aware of the issue, the Haitian National Police is committed to helping combat violence against women.

61. There is currently a group of 32 women's organizations which has held negotiations with Parliament (forty-sixth legislature) with a view to amending certain legal provisions deemed particularly unfavourable to women. The group has taken the view that in the present context it is easier to amend existing legislation than to draft new provisions. The negotiations with the members of Parliament, specifically with the Senate Commission on Health, Population, Family and Social Affairs and the Status of Women — have resulted in the formulation of three new legislative proposals to be submitted to Parliament.

62. These proposals relate to the decriminalization of abortion, rape as a crime against the person, recognition of domestic work and decriminalization of adultery. The Special Rapporteur on violence against women, Radhika Coomaraswamy, was at last able to undertake a mission to Haiti. Prior to her mission, she consulted the independent expert, who lent her his support. Her report will be submitted to the Commission on Human Rights at its next session.

IX. Rights of the child

63. The situation of *restaveks*, or children working as servants, is increasingly alarming. On average, these children are between 11 and 14 years old. They do all kinds of work for the host families without pay. Two years ago, they were estimated to number 200,000. A survey carried out for UNICEF by the Institut psycho-social de la famille (IPSOFA) suggests that today there are about 300,000. The survey stressed that living conditions for child servants are unsatisfactory, although one *restavek* out of four states that more or less adequate compensation is received for services rendered.

64. In a previous report the independent expert drew the attention of the international community to this distressing situation. The survey indicates that 77 per cent of such children reach 15, 16, or 17 years of age without ever having attended school; 55 per cent go to evening classes, 7 per cent go to a vocational school and 2 per cent attend a secondary school. The United States Government has decided to grant the Haitian Government an amount of $2 million to help to combat this practice, which dates from colonial times. At the very least this contribution will allow 10,000 children to be saved from domestic service and make it possible for them to receive an education and enjoy a life of freedom, in the words of the United States Secretary of Labor, Alexis M. Herman.

65. Access to education remains a major problem in Haiti; despite government action, over a million children between 6 and 11 years of age have no access to education. A basic education project is being formulated with the aim of promoting access to high quality basic education for children of both sexes, especially in rural areas and in underprivileged urban areas around Port-au-Prince.

66. The increase in education resources, although fairly modest in comparison with needs, has made it possible in the past year to refurbish over 55 national schools, build 15 high schools, refurbish 7 high schools and establish a programme to renovate 42 school buildings. During the same period, 4,500 disadvantaged children have received grants, 1,573,000 sets of school equipment have been given out, teaching materials and school supplies costing 44,640,850 gourdes have been distributed to pupils in the first two basic education cycles, and contracts for the manufacture of school furnishings totalling 32,848,129 gourdes have been concluded.

67. While it is a commonplace to say that young people are a country's future, there is a real risk that future generations will be handicapped because they did not enjoy the right to education. It must also be borne in mind that the strengthening of democracy depends on the level of education of the people. The independent expert has assured the NGOs and the Prime Minister of his willingness to echo their concern regarding shortcomings in the education sector. The Haitian Government is continuing its reform of the education system, undertaken by the Ministry for Education, Young People and Sports in the framework of the National Education and Training Plan. The reform focuses on two major issues: improved governance of the education system and a renewed emphasis on quality in education. Given the financial situation, success of the reform will depend on the level of support for the education sector provided by the international community.

X. Political situation

68. Haiti has been experiencing a serious political and institutional crisis for more than 20 months, causing concern among all those wishing to see democracy strengthened in the country. The independent expert has advised all the actors, thus contributing to the resolution of the crisis. At extremely difficult moments he has not hesitated to question each of them about their responsibilities. A Provisional Electoral Council is now in place, the candidate for the post of Prime Minister has been ratified, and his Government has already started work. The principal task is to prepare the organization of elections and to identify short- and medium-term priorities for the next Government.

69. The conflict between the Haitian Parliament and the executive has raised a very interesting legal problem in connection with which the Cour de cassation must take a decision regarding the action brought by Parliament concerning the unconstitutionality of article 158 of the Electoral Law of 14 February 1995. There is no doubt that the mandate of those elected in June 1995 legally expired on the second Monday of January 1999, as provided in the Electoral Decree of 14 February 1995. In other words, an institutional void has existed since 11 January 1999. The Head of State thereupon became the only organ empowered to act under article 136 of the 1987 Constitution. Should there have been prior consultation with the outgoing members of Parliament? Should the institutional void have been avoided by agreeing, in violation of the Law, that the members of Parliament should continue to sit until the next legislature had been installed?

70. The action brought by members of Parliament challenging the declaration by President Préval that their mandate had expired on 11 January 1999 was declared irreceivable by the Cour de cassation on 21 May 1999. It was the second action to be dismissed, the first having been rejected on 26 February 1999, owing in part to the view of the Cour de cassation that the case should have been previously heard by a lower court. The second action, concerning the cabinet decision compelling members of Parliament to surrender their official vehicles and firearms and freezing their salaries, was referred to the Cour de cassation after submission to the senior judge.

71. It should be recalled that in April 1999 the Organisation du peuple en lutte (OPL) again refused to take part in the consultations organized by the Provisional Electoral Council with a view to formulating a decree law on the organization of the next elections. In the view of Senator Yrvelt Chéry, an OPL leader, taking part in the talks would have amounted to backing what he termed "the *coup d'état* of 11 January against Parliament", referring to the decision by President Préval, who declared on 11 January 1999 that the mandate of the members of Parliament elected in the 1995 elections had expired. It should be made clear that OPL was part of a coalition of opposition political parties called the Espace de concertation. It withdrew on 6 March 1999, shortly before the conclusion of an agreement between the President and the Espace de concertation which made it possible to establish the Provisional Electoral Council and the Government of Prime Minister Alexis. At present matters seem to be back on track and OPL will no doubt participate in the elections.

72. On 20 July 1999 the Electoral Law was published in the Government gazette, *Le Moniteur*. The Law as published contains three significant changes to which the Provisional Electoral Council consented at the request of President Préval:

(a) No indication of the exact number of senators to be elected;

(b) Elimination of blank ballot papers (the subject of disagreement in the 1997 elections);

(c) Agreement to issue voter registration cards without photographs, should there be any difficulty in supplying photographs.

73. The Law also contained a change in wording that the Provisional Electoral Council did not accept: in the phrase specifying which senatorial posts were open for election, the text as published stated that the elections would "complete the election to (*compléter*) all posts of senator declared vacant de facto or *de jure*", whereas the Council said it had used the word "fill (*combler*)" instead of *compléter*.

74. It was subsequently reported that the error regarding the use of the word "*compléter*" instead of "*combler*" was attributable to the Provisional Electoral Council itself. A corrected version of the Electoral Law was to be published and ready for distribution on 27 or 28 July 1999. It should be made clear that even though the Electoral Law did not specify how many senators were to be elected, it authorized the Council to take a decision in that regard, and the Council decided that the number should be 19.

XI. Conclusion

75. In conclusion, the independent expert wishes to stress that Haiti has made progress towards building a democratic State with safeguards for individual freedoms. There have

been significant advances in human rights since the return to constitutional legality. Unfortunately, serious problems of governance, security and poverty remain as threats to the rule of law. The institutional deadlock over the past 20 months or so has seriously jeopardized the role of the State in improving living conditions for the people. The extreme poverty in Haiti is aggravated by natural disasters such as the high incidence of HIV/AIDS, estimated at 11 per cent in urban areas, 5.3 per cent in rural areas and 7.3 per cent nationwide. The question of the enjoyment of economic and social rights should therefore receive the full attention of the international community.

76. The independent expert calls on the Haitian authorities to make every effort to ensure that the perpetrators of the many crimes committed during and after the *coup d'état* are arrested, prosecuted and tried in accordance with the relevant human rights standards. Justice must be done to avoid the establishment of a permanent climate of suspicion, fostering the belief that violence is the only way out.

77. Today, more than ever, the greatest vigilance must be shown regarding respect for individual freedoms and the remedy of habeas corpus, and political actors, together with civil society, must reach agreement on the essential goal that unites them, namely the restoration of the full dignity of the Haitian people. In this context, the independent expert reaffirms his belief that the renewal of the mandate of MICIVIH is a necessity. In fact, without the determination of the MICIVIH authorities, the professionalism and commitment of its observers in the field, and the competence and sense of responsibility of its officials in Port-au-Prince, the human rights situation would not have improved, despite the good will of the Haitian Government.

78. The independent expert expresses the hope that all actors will help to create conditions that will allow the electoral process to continue without incident so that free, democratic and transparent elections can be held with the broadest possible participation by the Haitian people. In this connection, it is essential that the Provisional Electoral Council should strive to retain its credibility, objectivity and impartiality, in order that the elections may be held in accordance with the principles of democratic pluralism.

79. The independent expert encourages all the actors involved to pursue the political dialogue that they have already begun, but he cannot insist enough on the current priority: the holding of free, democratic and transparent elections, without which it will be impossible to ensure the institutional stability that is essential if the innumerable challenges facing the Government and people of Haiti are to be met.

80. Enhancement of the capacity of both government institutions and civil society, the promotion and protection of human rights, good governance and the sound administration of justice are challenges requiring particular attention in order that Haiti may enter the new millennium with the hope of ending, once and for all, the instability which has characterized it.